Introduced by Watermeier, 1.

Read first time January 17, 2017

Committee: Executive Board

A BILL FOR AN ACT relating to the Administrative Procedure Act; to amend
section 84-901.01, Reissue Revised Statutes of Nebraska, and
sections 84-907 and 84-907.06, Revised Statutes Cumulative
Supplement, 2016; to provide and change requirements and duties
relating to adoption and promulgation of rules and regulations; to
harmonize provisions; to repeal the original sections; and to
declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 84-901.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-901.01 (1) When legislation is enacted requiring the adoption and promulgation of rules and regulations by an agency or when an agency proposes or is required to make changes to existing rules and regulations and such changes include, but are not limited to, the amendment or repeal of a rule or regulation, such agency shall adopt and promulgate such rules and regulations within one year after the public hearing required under subsection (2) of section 84-907. Such time shall not include the time necessary for submission of the rules and regulations to the Attorney General pursuant to section 84-905.01 or submission of the rules and regulations to the Governor pursuant to section 84-908. Any agency which does not adopt and promulgate such rules and regulations as required by this section shall submit an explanation to the Executive Board of the Legislative Council and the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the legislation or the issue included in the agency’s proposed or required changes to existing rules and regulations, stating the reasons why it has not adopted such rules and regulations as required by this section, the date by which the agency expects to adopt such rules and regulations, and any suggested statutory changes that may enable the agency to adopt such rules and regulations.

(2) If such agency has not adopted and promul gated such rules and regulations within three years after the operative or effective date of such enacting legislation or within three years after the time it could be determined that an agency should have or was required to make changes to existing rules and regulations and such changes include, but are not limited to, the amendment or repeal of a rule or regulation, the standing committee of the Legislature which has subject matter jurisdiction over the matters included in the legislation or the issue included in the agency’s proposed or required changes to existing rules and regulations.
shall hold a public hearing to determine the reason that such rules and
regulations have not been enacted.

(3) The changes made to the Administrative Procedure Act by Laws
2011, LB617, shall not affect the validity or effectiveness of a rule or
regulation adopted prior to May 25, 2011.

(4) The changes made to this section by Laws 2013, LB242, shall
apply to legislation enacted before, on, or after September 6, 2013.

Sec. 2. Section 84-907, Revised Statutes Cumulative Supplement,
2016, is amended to read:

84-907 (1) Except as provided in section 84-901.04, no rule or
regulation shall be adopted, amended, or repealed by any agency except
after public hearing on the question of adopting, amending, or repealing
such rule or regulation. Notice of such hearing shall be given at least
thirty days prior thereto to the Secretary of State and by publication in
a newspaper having general circulation in the state. All such hearings
shall be open to the public.

(2) The public hearing on a rule or regulation that is required to
be adopted, amended, or repealed based upon a legislative bill or because
an agency proposes or is required to make changes to existing rules and
regulations and such changes include, but are not limited to, the
amendment or repeal of a rule or regulation shall be held within twelve
months after the effective or operative date of the legislative bill. If
there is more than one applicable effective or operative date, the
twelve-month period shall be calculated using the latest date. In
addition to the requirements of section 84-906.01, draft copies or
working copies of all rules and regulations to be adopted, amended, or
repealed by any agency shall be available to the public in the office of
the Secretary of State at the time of giving notice. The notice shall
include: (a) A declaration of availability of such draft or work copies
for public examination; (b) a short explanation of the purpose of the
proposed rule or regulation or the reason for the amendment or repeal of
the rule or regulation; and (c) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (b) and (c) of this subsection.

(3) A change to an existing rule or regulation to (a) alter the style or form of such rule or regulation, (b) correct a technical error, or (c) alter a citation or reference to make such citation or reference consistent with state or federal law but which does not affect the substance of the rule or regulation is exempt from the requirements of this section. Such change shall not alter the rights or obligations of the public.

(4) Agencies shall be exempt from promulgating security policies and procedures which, if made public, would create a substantial likelihood of endangering public safety or property.

Sec. 3. Section 84-907.06, Revised Statutes Cumulative Supplement, 2016, is amended to read:

84-907.06 Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, the agency shall send to the Executive Board of the Legislative Council, to the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the proposal, and to the Secretary of State to be made available to the public by means which include, but are not limited to, publication on the Secretary of State’s web site, if applicable, (a) a
copy of the hearing notice required by section 84-907, (b) a draft copy
of the rule or regulation, and (c) the information provided to the
Governor pursuant to section 84-907.09.

Sec. 4. Original section 84-901.01, Reissue Revised Statutes of
Nebraska, and sections 84-907 and 84-907.06, Revised Statutes Cumulative
Supplement, 2016, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when
passed and approved according to law.